

APPEAL NO. 022204  
FILED OCTOBER 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 9, 2002, with the record closing on August 1, 2002. The hearing officer determined that the appellant's (claimant) compensable injury does not extend to or include depression and that his impairment rating (IR) is seven percent pursuant to the Texas Workers' Compensation Commission (Commission)-appointed designated doctor's amended certification. The claimant appealed on sufficiency of the evidence grounds. The respondent (carrier) responded, objecting to documents attached to the claimant's Request for Review on the grounds that they are being offered for the first time on appeal and otherwise urging affirmance.

DECISION

Affirmed.

Attached to the claimant's appeal were documents not offered into evidence at the hearing. Generally, the Appeals Panel does not consider evidence not offered into evidence at the hearing and raised for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). We do not find that to be the case with the documents attached to the appeal which were neither offered or admitted into evidence at the hearing.

The hearing officer did not err in determining that the claimant's compensable injury does not extend to or include depression. The issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). Nothing in our review of the record indicates that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

In evidence at the hearing was a designated doctor's report in which he certified that the claimant had a five percent IR. After the close of the hearing in this matter, the hearing officer sent the designated doctor a letter of clarification regarding the claimant's proper IR. The designated doctor responded by amending his initial five percent IR certification to seven percent. The hearing officer determined that the

designated doctor's amended seven percent IR certification is entitled to presumptive weight because it was prepared within a reasonable time and for a proper purpose and was not against the great weight of the other medical evidence. We note that the Commission adopted Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)), effective January 2, 2002. Rule 130.6(i) provides that a designated doctor's response to any Commission request for clarification is considered to have presumptive weight, as it is part of the designated doctor's opinion. In Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002, we held that Rule 130.6(i) "does not permit the analysis of whether an amendment was made for a proper purpose or within a reasonable time." We consider Rule 130.6(i) and Appeal No. 013042-s as dispositive of this case with the designated doctor's amended report of a seven percent IR having presumptive weight. The hearing officer did not err in giving presumptive weight to the seven percent IR in the designated doctor's amended report in accordance with Rule 130.6(i) and Appeal No. 013042-s, *supra*.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **POTOMAC INSURANCE COMPANY OF ILLINOIS** and the name and address of its registered agent for service of process is

**C. J. FIELDS  
5910 NORTH CENTRAL EXPRESSWAY  
DALLAS, TEXAS 75206.**

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Michael B. McShane  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Margaret L. Turner  
Appeals Judge